



February 25, 2003

U.S. Department of Transportation
Docket Management System
400 7th Street S.W., Room PL401
Washington, D.C. 20591-0003

Re: Petition for exemption Docket No. FAA-2001-11097

Pursuant to the provisions of CFR 14 FAR Part 11, Section 11.101, Business Jet Services, Ltd., hereby ask the F.A.A to reconsider the denial of the subject petition.

In your letter of denial dated 01-31-2003, you acknowledge that BJS reported proving test expenditures in excess of \$200,000.00 as of January 9, 2002. As of January 31, 2003, the date of your response, the cost figures have grown to more than \$225,000.00.

In this petition for reconsideration Business Jet Services, Ltd. desires to emphasize the fact that the excessive proving tests regulated by FAR 135.145 do not improve the level of safety. This position is supported by aviation safety statistics, which do not reflect evidence that lack of proving test is ever a cause or contributing factor in aircraft accidents.

Additionally: the proposal for amending FAR 135.145 to eliminate the repetitive and unnecessary burden of proving tests has been "signed off" by the F.A.A. The proposed amendment to FAR 135.145(b) states: "No certificate holder may operate a turbo-jet airplane if it has not previously prove the same or another turbo-jet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator....."

This proposal was included in NPRM Notice No. 01-08 (66FR 37520, July 18, 2001). The proposed amendment for eliminating unnecessary proving tests was agreed upon by a committee of aviation experts who were knowledgeable in airplane performance, enroute procedures, airman certification and training, airport capability and aviation safety.

It is noted that the letter of denial used the one opposing commentator's analysis as a basis for the denial.

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Business Jet Services, Ltd., needs to point out that the opposing commentators' opposition to the petition was entered on March 8, 2002; which was after the closing of the comment period.

The individual's comments contained numerous factual errors as follows:

Comment:

The commentator states that FAR 135.145 (d) "gives principal operations inspectors the authority to approve significant deviation from the requirements of this rule".

Response:

Principal Operations inspectors are not mentioned in the rule. The F.A.A. Handbooks specify an inspection team made up of the following personnel:

Airworthiness Inspectors (maintenance and avionics) trained on the equipment and experienced in either FAR 121 or 135 operations as applicable.

An Aviation Safety Inspector (operations) type rated on the equipment.

And as required:

A Cabin Safety Specialist

A Civil Aviation Security Field Office Representative

Comment:

The commentator further states that, "...approving an operator to begin revenue service with an aircraft without ever demonstrating to the F.A.A. that it is capable of operating that aircraft safely is imprudent".

Response:

The pilot in command of a turbo-jet airplane operated under FAR 135 must have an ATP certificate and be type rated in the airplane.

Crewmembers must be further tested in accordance with Subpart G of FAR 135.

The pilot in command must undergo Line Checks: Routes and Airports per FAR 135.299 in addition to the instrument proficiency check requirements of FAR 135.297.

In each of these cases the crewmembers are demonstrating their capability of operating the airplane safely.

Comment:

The commentator also states that, "The principal operations inspector assigned to an operator should be the person relied upon to know the capabilities of the airline he or she manages and to make the proper decision regarding any reduction in required proving test hours based on existing guidance and policy."

Response:

Again it is evident the commentator is not familiar with the inspection team policy specified in the F.A.A. Handbooks. Further, we know of no instance where the inspection team recommended a reduction exceeding 50% that did not create an additional delay and unnecessary burden for the operator, due to lack of expediency within the F.A.A.

Additionally, please note, the "individual" who entered these comments into the docket is an F.A.A. operations inspector in the South West Region.

The F.A.A.'s analysis/summary contains additional statements that need to be addressed. For example, it was the committee of aviation experts, not BJS, which concluded that "proving tests do not improve safety", BJS agrees with that conclusion.

Business Jet Services, Ltd. agrees that FAR 121 contains safety standards more rigorous than Part 135. Business Jet Services, Ltd.'s petition for exemption was specifically for FAR 135.145; FAR Part 121 was not mentioned in the petition and is questionable regarding its reference in the letter of denial.

The 01-31-2003 letter states, "The petitioner does not specify all of the aircraft type that it wants to operate without conducting proving tests under Part 135. The F.A.A. notes that Part 121 also contains similar proving test requirements (see 121.163)".

Business Jet Services, Ltd. needs to point out that airplanes having a passenger seat configuration of more than 30 seats, excluding each crewmember seat and airplanes having a payload capacity of more than 7500 pounds are required to be operated under FAR 121, if used in common carriage. Refer to FAR 119.3 Definitions Supplemental operation and FAR 119.21 (a) (3). Airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload

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capacity of 7500 pounds or less are defined as on-demand and are operated under FAR 135; reference FAR 119.3 Definitions On-demand operations and FAR 119.21 (a) (5).

The Business Jet Services, Ltd. petition for exemption referred only to FAR 135.145. To determine the airplanes covered by this rule, refer to the above referenced Federal Aviation Regulations. If BJS operates an "unidentified" aircraft having a passenger seat configuration or a payload capacity requiring compliance with FAR 121 we will at that time apply for certification under the rules of FAR 121.

BJS agrees that operation in common carriage under Part 121 should not be conducted under the less rigorous safety standards contained in Part 91.

BJS also agrees that the general rule making process would provide the relief sought. However, such a rule-making proposal has been docketed since 07-18-2001 with no relief to date for on-demand operations.

In the summarization of the F.A.A. letter of denial dated January 31, 2003, you state, "The F.A.A. agrees with the comment from the individual. The range of aircraft types that may be operated under Part 135 is so broad, that it would not be prudent to allow Part 135 operators to put aircraft types new to their Part 135 operations into service without each Part 135 operator demonstrating that it can do so safely".

It should be noted that you have agreed with the "individual" in opposition to a committee of aviation experts including the F.A.A. Acting Administrator, Mr. Monte Belger, who signed off on the proposed amendment to FAR 135.145 which would allow Business Jet Services, Ltd. as well as other on-demand operators to operate without conducting repetitive and unnecessary proving tests.

BJS believes it to be extremely unfortunate that the F.A.A. makes such important decisions governing the aviation industry based on comments from F.A.A. personnel who are not familiar with the Federal Aviation Regulations and F.A.A. guidance material, further, BJS believes the comments regarding FAR 121 show that the decision was not focused on the rule and the circumstances identified in the petition for exemption.

In consideration of the forgoing information Business Jet Services, Ltd. requests reconsideration of the petitions for exemption identified in Docket 2001-11097.

Sincerely,

J. "Rob" Irwin
Director of Operations

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